

REMARKS

Claims 1, 2, 4, 5, 9, 10, 14, 15, 19, 20, 24, 25, 28 and 29 remain pending in the present application.

Claims 1, 2, 4, 5 and 29 over Iyengar in view of Rydbeck; claims 14, 15, 24, 25 and 28 over Iyengar in view of Rostoker; and claims 9, 10, 19 and 20 over Iyengar in view of Wingate

Claims 1, 2, 4, 5 and 29 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Iyengar in view of Rydbeck (WO 99143136) ("Rydbeck"); claims 14, 15, 24, 25 and 28 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Iyengar in view of U.S. Pat. No. 6,035,212 to Rostoker ("Rostoker"); and claims 9, 10, 19 and 20 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Iyengar in view of U.S. Pat. No. 6,006,115 to Wingate ("Wingate"). The Applicants respectfully traverse the rejections.

Iyengar is not available as prior art with respect to 35 USC 103(a), as Iyengar and the present invention were both owned, or subject to an obligation of assignment, by the same person. In particular, when the present invention was made (before the filing date of November 23, 1999), both Iyengar and the present invention were owned by LUCENT TECHNOLOGIES INC. (Note that subsequent to the filing of the present invention, LUCENT TECHNOLOGIES INC. spun off the group AGERE SYSTEMS INC., which continues to own both IYENGAR and the present invention.

The Examiner indicates that he disagrees about Iyengar. (Office Action at 8) In support, the Examiner indicates that for purposes of section 103, the filing date of the application is November 23, 1999.

The Examiner is respectfully directed to the **CONTINUED PROSECUTION APPLICATION** (CPA) filed on August 12, 2004. The Examiner is also respectfully directed to the very same MPEP section cited in the First and Final Office Action dated December 29, 2004.

In particular, MPEP section 706.02(I)(1) reads, in pertinent part:

Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention “were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” This change to 35 U.S.C. 103(c) applies to all utility, design and plant patent applications filed on or after November 29, 1999, including continuing applications filed under 37 CFR 1.53(b), continued prosecution application filed under 37 CFR 1.53(d), and reissues.

Again the Examiner is respectfully directed to the CONTINUED PROSECUTION APPLICATION (CPA) filed on August 12, 2004, which allowed entry of the Amendment of the same date.

Iyengar being unavailable as prior art with respect to any obviousness-type rejection, the present rejections cannot stand on Rydbeck, Rostoker, or Wingate alone.

For these and other reasons, claims 1, 2, 4, 5, 9, 10, 14, 15, 19, 20, 24, 25, 28 and 29 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Withdrawal of Finality of Action

The rejections being improper, it is respectfully requested that the finality of the office action, the FIRST subsequent to the filing of the CPA, be withdrawn.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,



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